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Committee on Public Order and Safety
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Human rights defenders of Karapatan, a national alliance of human rights desks, organizations and individual human rights advocates in the Philippines, express our support for House Bill No. 0482, repealing Republic Act No. 9372 or the Human Security Act of 2007, filed by the Makabayan Bloc led by Bayan Muna Rep. Carlos Zarate, which, in our opinion, is most consistent with international and national human rights principles and instruments, among the proposals being deliberated upon on today’s Committee on Public Order and Safety hearing at the House of Representatives regarding RA 9372.

Karapatan believes that RA 9372 infringes on the people’s exercise of basic rights and fundamental freedoms, and considers any amendments worsening the provisions of this piece of legislation as furtherance of legal repressive measures that are in sync with the brand of state repression that the current administration employs.

House Bill Nos. 551, 2082, 2847, 3103, 3413, and 5710, authored by Reps. Rozzano Rufino Biazon, Jericho Jonas Nograles, Luis Raymund Villafruela Jr., Michael Romero, Jocelyn Tulfo, Eric Yap, Rowena Nina Taduran, and Lianda Bolilia amending the already questionable HSA will enable the wholesale disregard of human and people’s rights enshrined in the 1987 Constitution and is severely inconsistent with international human rights standards including the right to due process, against unlimited detention of suspects, rights to free speech and expression, right to peaceably assemble and petition the government for redress of grievances, right to freedom of association, the right of human rights defenders to promote and protect human rights and fundamental freedoms, right to mobility and against unjust and cruel punishments. These view is placed in the context of the equally disturbing preponderance of giving too much power to the law enforcers in the Philippine National Police and the Armed Forces of the Philippines.

Karapatan also believes that these draconian measures are in line with the counterinsurgency program of previous regimes and the current one which have impacted heavily on people’s lives and have created a deeper and more intense climate of insecurity and impunity in the country, and are therefore under the direct orders of the President who cannot wait to use these anti-terrorism legislations against human rights defenders, civil libertarians, advocates of freedom of expression, and legitimate dissenters.
In particular, Karapatan raises the following concerns on, and thereby opposes, the following specific provisions of House Bill Nos. 551, 2082, 2847, 3103, 3413, and 5710:

1. The removal of all provisions and language in Section 2 (Declaration of Policy) in HB 5710, HB 2082, HB 2847, and HB 3413 that pertains to the duty of the State under international law to protect people from terrorist acts in a manner that is consistent to and that respects and promotes human rights. These obligations are stated in the International Covenant on Civil and Political Rights. The removal of this provision also completely disregards measures by which terrorism is tackled through a comprehensive framework taking into account the root causes of terrorism.

2. The iteration and expansion of the already vague and overly broad definitions of terrorism and acts of terrorism as defined in Sections 3, 4, 5, 7, 8 9, 10, 11, 12, and 13 of HB 3413; in Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of HB 551, HB 2847, HB 2082; in Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of HB 2847; in Sections 3, 4, 5, 6, and 7 of HB 5710 that threaten the rights of individuals and the exercise of the rights of human rights defenders and the people’s rights to freedom of expression, assembly, and association, to seek redress of grievances and to be involved or to take part in public affairs.

In defining acts of terrorism, HB 5710, HB 2847, HB 3413, HB 551, HB 2847, and HB 2082 qualify ordinary crimes as terrorist crimes through:

a) the inclusion of the phrases “or any other act intended to cause death or serious bodily injury to any person,” “intended to seriously interfere with, disrupt or destroy critical infrastructure,” “attacks that cause death or serious bodily injury to any person,” or “attacks that cause extensive damage or destruction to government or public facility, critical infrastructure, public place or private property likely to endanger human life or result in major economic loss,” in defining and describing acts of terrorism;

b) restatement of the acts punishable under the Revised Penal Code such as rebellion as acts of terrorism, notwithstanding the comments of UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism Martin Scheinin on the HSA’s overly broad definition of terrorism stating that its “reference to entire statutes without specifying the actual criminal offense leading to an over-inclusive definition of terrorist crimes”; and

c) expanding on the predicate crimes that will fall under the crime of terrorism thereby bolstering the already over-inclusive definition. Above-mentioned sections can thus be spuriously used against any individual, who may just be committing ordinary crimes, and may be used by persons in authority who want to float the specter of terrorism to justify any repressive law, policy or action.

Also under aforementioned sections, the provision of material support to alleged terrorists or terrorist organizations, even without full knowledge of the person/s that s/he is providing such support to alleged terrorists, or the recruitment to or membership in alleged terrorist groups,
even without full knowledge that such groups are proscribed as such, can lead to a penalty of years of imprisonment, life imprisonment or death, a punishment that been renounced by the international community.

The very dangerous provisions defining “probable cause” as “a reasonable ground of suspicion” implies that anyone can be arbitrarily proscribed and considered as a “terrorist.” This definition broadly violates the people’s right to due process, as it is not necessary any more for State to show any evidence or proof ascertaining their personal knowledge on the alleged terrorist crimes of persons or groups suspected of terrorism.

Provisions regarding acts such as “inciting to terrorism” or “glorification of terrorism” are muddled in vagueness that will inevitably redound to issues concerning the right to free expression, people’s right to information and the exercise of press freedom.

As it is, the current laws and provisions of the Revised Penal Code are used against activists and political dissenters, in an attempt to deter them from advocating for reforms or social change. Instead of facing charges of rebellion, as the complaints or charges against them allege that they are committing crimes in furtherance of their political beliefs, they are charged with fabricated criminal offenses such as illegal possession of firearms and explosives, murder, arson, etc to hide the political nature of their arrest and the charges against them.

Karapatan documented nearly 1,000 activists and political dissenters charged with common crimes, and 604 of them are unjustly in prison.

As it is, the context during which this measure is being pursued is already dangerous and deadly for human rights defenders. Karapatan documented at least 293 extrajudicial killings and 429 frustrated killings of civilians and human rights defenders, majority of them are peasant leaders, indigenous activists, church and human rights workers, and environmental defenders accused as members of rebel groups who are also tagged as “communist terrorist groups” by government officials.

Thus, we view the all-encompassing or expanded definition of terrorism through the current HSA and the proposed amended version as among the repressive tools meant to criminalize and infringe on the legitimate exercise of the rights of human rights defenders and the people’s rights to freedom of expression, assembly, and association, to seek redress of grievances and to be involved or to take part in public affairs.

Even under the current HSA, the tagging of individuals as members of the New People’s Army or officials and members of the Communist Party of the Philippines and NPA has led to dire impacts on the above-mentioned rights and freedoms.

Aeta peasant Edgar Candule was arrested by elements of the Philippine National Police without a warrant or authorization from the Anti-Terrorism Council (ATC) on March 21, 2008 in Botolan, Zambales for allegedly possessing so-called “subversive documents and a firearm and for being suspected of membership in the NPA.” He was held at Camp Conrado Yap for three days, where he was tied to a Monobloc chair, interrogated without legal counsel,
repeatedly punched, electrocuted in his hands, feet and chest, forced to admit that he owned a firearm and threatened with death every time he denied that he was a NPA member. The PNP charged him with terrorism under Section 3 of the HSA based on allegations of his possession of a firearm and subversive documents and that with these he was “engaged in sowing and creating a contention of widespread fear and peace among the populace.”

During Candule’s trial, one of his arresting officers said he only attended one seminar on the HSA and that he was not familiar with the provisions of the law. PO3 Rex Sahagun testified that he was part of the team that conducted the warrantless arrest of Candule and that they did it, without authorization from the ATC, based on their understanding that the possession of a firearm and subversive documents constitutes the crime of terrorism.

On October 20, 2010, Candule’s lawyers from the National Union of Peoples’ Lawyers (NUPL) filed a motion to dismiss at the Zambales Regional Trial Court Branch 69, with a prayer that he be compensated under Section 50 of the HSA. Presiding Judge Josefina Farrales granted the motion to dismiss, stating that the prosecution failed to prove the existence of the crime of terrorism. The court however was silent on the prayer for compensation. NUPL filed an appeal with the Court of Appeals, but there is no decision yet, as of this writing. For his nearly three years in captivity alone, notwithstanding the torture he endured, Candule deserves a monetary compensation of at least PhP470 million. This provision though of the HSA on damages for unproven charge of terrorism did not deter the police in illegally arresting, torturing and detaining Candule.

On February 21, 2018, the Department of Justice filed a petition before a Manila court proscribing the CPP and NPA as terrorist organizations under the HSA. In the said petition, at more than 600 individuals were named as supposed leaders and members of the two organizations, including 61 human rights defenders, 38 personalities involved in the peace process of the National Democratic Front of the Philippines with the Government of the Republic of the Philippines, 16 political prisoners, eight deceased persons, and two disappeared activists. The list included the names of United Nations Special Rapporteur on the Rights of Indigenous Peoples Victoria Tauli-Corpuz, former UN experts Joan Carling and Atty. Jose Molintas, and an officer of Karapatan, Elisa Tita Lubi. These individuals vehemently denied any knowledge or participation in the alleged incidents cited in the petition, while explicitly denying that they are members or officials of the CPP or NPA. The list also contains 189 aliases and an unspecified numbers of John and Jane Does, making it susceptible for inclusion of additional names.

While two names – that of Prof. Jose Maria Sison and Antonio Cabalintan – were left in the DOJ’s amended petition, the following questions still hound those who initially listed and the general public: first, that Pres. Duterte himself has publicly acknowledged that the CPP and NPA are waging armed struggle for revolutionary, not terroristic, ends; second, that the peace process between the Philippine government and the NDFP is an acknowledgement that a domestic armed conflict exists and that the government’s engagement in the peace process runs counter to the spirit and intent of the DOJ petition; and third, that if the CPP and NPA are proscribed, especially in the context of the rabid McCarthyite witch-hunt and vilification
campaigns under Executive Order No. 70, anyone can be a fair target of arbitrary arrest, detention and other rights violations through the HSA.

This absurd, baseless, and arbitrary listing is a take-off from the creation and enforcement of Order of Battle (OB) lists during the Gloria Arroyo and Noynoy Aquino regimes. Persons listed in the OB often ended up arrested based on false charges, incarcerated and even tortured, missing or killed. Not only do such lists incite and lead to human rights violations, such as warrantless arrests or surveillance, they also legitimize and make "normal" to the public the government's abuse of power in suppressing dissent of the supposed "enemies of the state."

The dire implications of said lists and the filing of HSA against those targetting by the State were experienced by Lumad leader Datu Jomorito Guaynon, peasant leader Ireneo Udarbe, and the four farmers who are members of the Misamis Oriental Farmers Association, who were all arrested in January 2019. HSA charges were brought against and were eventually dismissed in the case of Guaynon and Udarbe, but the four peasants have yet to see the resolution in their case.

This situation will definitely worsen with provision on the House Bills where with only a mere ex parte application (provision on giving due notice and opportunity to be heard to respondents was deleted) of the DOJ proscribing alleged individual terrorist, terrorist organizations, association or group of persons. This provision will enable courts to issue a preliminary order of proscription in at least 24 to 72 hours, along with a preliminary asset preservation order. This means, a suspect, not yet convicted of a crime, loses his freedom and his material wealth, if any, as soon as one is proscribed as a terrorist.

Also under proposed provisions, a strike of jeepney drivers and operators or a workers’ strike, which are legitimate acts of redress of grievances, can fall under this definition of terrorism. Note that even at their planning stage, transport strikes or workers’ strikes can be construed as acts of terrorism, with the phrase “regardless of the stage of its execution.”

Provisions in Section 4, citing Republic Act 10175 or the Cybercrime Prevention Act of 2012, with their vague and over-broad definitions make individuals highly vulnerable to arbitrary tagging or suspicion as terrorists, especially those who express opinions on or dissent to government policies, even as they are legal activists, journalists, or peace advocates. Likewise in Section 4, provisions citing Republic Act 9165 or the Comprehensive Dangerous Drugs Act of 2002 will make the already bloody drug war even more brutal and detrimental to people’s rights.

3. Disproportionate, cruel and unjust punishment of death, life imprisonment and prison terms for individuals alleged to have committed terrorist crimes stated in the vague and overly broad provisions of the House Bills.

The new amendments do not and distinguish between the principal acts of terrorism and adjuncts to it. All will be punished with life sentences to a minimum of ten years, notwithstanding “judicial discretion of taking into consideration the individual’s personal guilt and other significant circumstances when rendering the verdict.”
Proposals to revive the death penalty through the amendments to the HSA are likewise in direct violation of the ICCPR Second Optional Protocol, of which the Philippines is a signatory to.

4. Gross implications on the right to due process and the right to privacy on provisions regarding surveillance of suspected terrorists in several sections of the House Bills, including those that imply that even upon mere suspicion, any individual may be subject to electronic or physical surveillance and to scrutiny of personal communications by law enforcement and worse, military personnel who have time and again conducted surveillance activities against activists that resulted to extrajudicial killings, torture and other rights violations. Proposed amendments even lengthen the authorized period of surveillance from 14 days to 90 days.

Authorization, and thus oversight and command responsibility, of the Anti-Terrorism Council for classification of information was removed. The individual’s right to know that s/he is being surveilled was also removed, which does not only violate due process rights, but may also result to a witch-hunt of government critics and activists on mere communications on legitimate criticisms and expressions of grievances against government policies.

Provisions on the non-authorization of surveillance, interception and recording of privileged communications such as that of lawyers and clients, doctors and patients, journalists and their sources, and confidential business correspondence was also stricken out.

5. Gross violations on the right against illegal and arbitrary detention, torture and to cruel and degrading treatment in proposed provisions, and the removal of provisions in pertaining to rights of detained persons and against torture.

These proposals indicate that:

a) The lengthening of arbitrary detention, without charges, of person/s before they are delivered to proper judicial authority is patently in contrast, violative and deeply incoherent with Republic Act 9745 or the Anti-Torture Law11, with Republic Act 7438 or the law on the rights of persons arrested, detained or under custodial investigation12, with the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and all other relevant international human rights instruments to which the Philippines is a signatory; and

b) The explicit approval and promotion of torture and other cruel, inhuman or degrading treatment during the arbitrary or illegal detention of an accused individual.

6. Gross violations on the right to freedom of movement and right to due process in provisions of on suspension/cancellation of passports, issuance of hold departure order, and on limiting the right to travel of individuals, even just on mere suspicion of terrorism.

7. Removal of provisions providing penalties and/or lowering of penalties for State authorities who violate basic civil and political rights of persons, including those that pertain to the failure of police or law enforcement official to notify the person subject of surveillance, monitoring,
interception and recording; failure to notify in writing the persons subject of the surveillance; violations on the rights of detained persons and against torture; and damages for unproven charge of terrorism is proposed to be repealed.

Removing or lowering these penalties give State authorities a free pass, if not outright approval and endorsement, for violations on human rights and civil liberties that will be committed in furtherance of this proposed measure. These provisions are supposedly there to ensure that authorities will remain mindful and respectful of the rights of the accused or suspected persons. However, if these provisions will make it to the amended law, we say this is legalized and institutionalized impunity at its worst.

In some of the proposed House Bills, the grievance committee, where complaints regarding the implementation of the HSA has been removed, making State forces as untouchable as the mafias of the old days.

8. Violations of international instruments pertaining to protection of sources and whistleblowers in provisions pertaining to unauthorized revelation of classified materials and arrest of unwilling material witness. Such provisions will have the following repercussions: first, possible transgressions on the confidentiality and protection of sources or journalists; and second, reprisals on government personnel who discloses “classified information” under the HSA that he or she reasonably believes, at the time of disclosure, to be true and to constitute a threat or harm to a specified public interest, such as a violation of domestic or international law, abuse of authority, waste, fraud, or harm to the environment, public health or public safety.

9. Vague definitions of “special facility” where detainees under the amended HSA will be incarcerated and of “violent extremism” which may arbitrarily be defined by military or police officials in public information and educational materials or events.

10. The composition, mandate, and functions of the Anti-Terrorism Council is unmistakably similar to the current composition, mandate and functions of the National Task Force to End Local Communist Armed Conflict. Is this amendment meant to institutionalize not only the NTF-ELCAC but also its “whole of nation approach,” a paradigm and approach that has earned criticisms of being marked with corruption of military and police officials?

Karapatan also emphatically states that the HSA and the current measures amending it to worsen its impact on people’s rights completely disregards international humanitarian law, as these do not distinguish national liberation movements or movements for self-determination from terrorist groups. These has dire implications on the peace processes with the NDFP as well as those with Bangsa Moro movements, notably violating the GRP agreements with the NDFP such as the Joint Agreement on Safety and Immunity Guarantees and the Comprehensive Agreement on the Respect for Human Rights and International Humanitarian Law (CARHRIHL), and most especially on civilians, as the government blurs the distinction between combatants and non-combatants. Karapatan believes that terrorism can be addressed, not through the defective militarist approach that our State forces employ, but
through the pursuit of a just and lasting peace, tackling the roots of the problems of social injustice and inequality, and through genuine respect for people’s rights.

Karapatan reiterates its position rejecting House Bill Nos. 551, 2082, 2847, 3103, 3413, and 5710 and calling for the repeal of the Human Security Act of 2007 through the enactment of House Bill 0482. Lest this roll-out of repressive legislation and the dismal human rights situation are reversed, the view that the State is the primary purveyor of terrorism will remain in the eyes of the victims of rights violations.